

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 354 of 1997

in

SPECIAL CIVIL APPLICATION No 2165 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SULKHANSINH MANOHARSINH

Versus

SHREE BAJAJ SANFEB PVT LTD.

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Appearance:

MR RV DESAI for Petitioner

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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 01/07/97

ORAL JUDGEMENT(Per:Thakker.J)

This appeal is filed against an order dated March 14, 1997 passed by the learned single Judge summarily dismissing the Special Civil Application No. 2165 of 1997. By the said order the learned single Judge dismissed the petition filed by the petitioner observing that he had worked only for two and half months between July 1992 and September 1992 and had not completed 240 days and was not entitled to any benefit.

2. Mr. R.V. Desai learned counsel for the appellant contended that there is an error apparent on the face of the record committed by the learned single Judge in ignoring the provisions of section 25-F of the Industrial Disputes Act 1947 (hereinafter referred to as 'the Act'). He submitted that two points arose for determination of the authorities. Relying upon Rule 81 of Industrial Disputes Rules, 1966 Mr. Desai submitted that Rule 81 enjoins upon the employer to maintain seniority list of workers and to maintain a Register to that effect. It is irrespective of the fact whether an employee is permanent or not. The said Register is not maintained. It was also argued that in the written statement it was admitted by the employer that "the record of both the categories was not kept separate." The company had maintained Register of permanent workman and that the employer had shown his willingness to produce said Register at the time of hearing of T. Application but it is not shown at all.

3. Looking to the order passed by the Labour Court, Industrial Tribunal or the learned Single Judge, it does not clearly appear that point regarding non observance of Rule 81 was ever pleaded. In the circumstances, it is not proper to allow such a contention to be raised at this stage. Hence, it cannot be said that there was non compliance of the provisions of Rule 81. In the circumstances reliance placed on Trade-Wings Limited vs. Prabhakar Dattaram Phodkar of Bombay & ors 1192(1) CLR 480 is ill founded. In that case at the first stage a contention was taken and a finding was arrived at by the Labour Court that there was non compliance with the provisions of Rule 81. Therefore, said case does not carry the matter any further.

3. The second contention of Mr. Desai was that provisions of sections 21-G and H had not been complied with. That point was not taken before the Labour Court. However, it was taken before the Industrial Court i.e. appellate forum. The Industrial Tribunal observed that though that point was not taken before the Labour Court,

on merits also, there was no substance in it. The Tribunal observed that it was asserted by the employee that various persons were taken in employment by the company after termination of the appellant but his say was not supported by any documentary evidence and even the names been given by the appellant. It was, therefore, held that contention could not be accepted. In our view, there was no evidence to show non-compliance with the provisions of sections 25-G and H of the Act.

4. We do not see any infirmity in the order passed by the learned single Judge and, therefore, the appeal deserves to be dismissed. Accordingly the appeal is dismissed. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.)